

# COMMONWEALTH OF AUSTRALIA

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Family Name	
Given Names	
Student Number	
Teaching Period	Semester 2, 2016

FINAL EXAMINATION	DURATION				
LWZ204 – Constitutional Law	<table> <tr> <td>Reading Time:</td><td>20 minutes</td></tr> <tr> <td>Writing Time:</td><td>120 minutes</td></tr> </table>	Reading Time:	20 minutes	Writing Time:	120 minutes
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### INSTRUCTIONS TO CANDIDATES

1. The examination has only one section. You must answer any three of the five questions. The examination is worth 60% of the final grade.
2. Note that all questions ARE of equal value.
3. Read ALL questions carefully.

### EXAM CONDITIONS

**You may begin writing from the commencement of the examination session.** The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

No calculators are permitted

Any handwritten material is permitted

Any hard copy, dictionary is permitted (annotated allowed)

Answer on the supplied examination material/s only

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	1 x 20 Page Book 1 x Scrap Paper

**THIS EXAMINATION IS PRINTED  
DOUBLE-SIDED.**

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**Answer any three of the five questions.**

### **Question 1**

The *Equal Opportunity Act 1977* (Cth) prohibits employers from discriminating against any of their employees. The Act also authorises the Equal Opportunity Board to investigate any complaints made under the Act and to amend orders. Andrew is the Headmaster of a primary school in Melbourne. He dismissed William upon discovering that William is gay. Andrew dislikes gays and lesbians and is of the opinion that they should not become teachers.

William taught history at the school for a year and was one of the best history teachers in the school. William felt that he had been treated unfairly and complained about the dismissal. The Board reviewed the dismissal and ordered Andrew to reinstate William's position as a teacher as it was of the opinion that William was a very competent history teacher and there was no reason to dismiss him. The Board was also of the opinion that William had been discriminated against by Andrew because he was gay.

Andrew claimed that the *Equal Opportunity Act 1977* (Cth) was inconsistent with the *School Teachers Act 2016* (Vic). The *School Teachers Act 2016* (Vic) authorises an employer to dismiss a teacher by seven days' notice in writing during the first eighteen months of employment. Andrew argued that the *School Teachers Act 2016* (Vic) gave him a right to dismiss William.

Advise Andrew.

(20 marks)

### **Question 2**

'The principle of 'representative democracy' can be given the status of a constitutional imperative, but only in so far as the meaning and content of that principle are implied in the text and structure of the Constitution. The constitutional question for determination in this case cannot be stated as though it asks whether the distribution of electoral districts or of electoral regions is consistent with a general principle of representative democracy – especially if the content of 'representative democracy' is derived from sources outside the Constitution. The constitutional question is whether there is inconsistency with the text and structure of the Constitution.'

- Per Brennan CJ in *McGinty v Western Australia* (1996) 186 CLR 140

Discuss the statement above.

(20 marks)

### Question 3

The *Marketing of Farming Products Act 2015* (Qld) regulated the sale of all vegetables grown in Queensland under the Queensland vegetable-marketing scheme and vested powers to regulate the sale in the Queensland Vegetable Marketing Board. The Board had the power to market, grade and sell all of the State's vegetables under the vegetable-marketing scheme. The vegetable-marketing scheme's main objective was to ensure that vegetable farming remains as a successful venture in Queensland. Under the vegetable – marketing scheme, any contract for the sale of vegetables that is made directly with a farmer in Queensland is void. Vegetable sales can only be made through the Marketing Board's vegetable-marketing scheme.

Jimmy, a Queensland vegetable farmer, wanted to make a bigger profit by selling his vegetables directly to Desmond, who is a private buyer in Tasmania and who runs a successful grocery store. Desmond was very interested in buying Jimmy's vegetables because Jimmy could deliver them to his grocery store very efficiently. Jimmy was happy to sign a contract to sell his vegetables to Desmond as he would be able to make huge profits from the contractual arrangements.

Jimmy previously sold his vegetables through the vegetable-marketing scheme but he was not making much profit. The Board stated that the contract between Jimmy and Desmond is void as it contravened the *Marketing of Farming Products Act 2015* (Qld). Jimmy argued that the rules in the *Marketing of Farming Products Act 2015* (Qld) had imposed a discriminatory protectionist burden.

Advise Jimmy.

(20 marks)

### Question 4

'A number of considerations exist which point very definitely to the conclusion that the Constitution does not allow the use of the courts established by or under Chap III for the discharge of functions which are not in themselves part of the judicial power and are not auxiliary or incidental thereto ...'

- Per Dixon CJ, McTiernan, Fullagar and Kitto JJ in *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254

Discuss the statement above.

(20 marks)

### Question 5

‘The position of the federal government is necessarily stronger than that of the States. The Commonwealth is a government to which enumerated powers have been affirmatively granted. The grant carries all that is proper for its full effectuation. Then supremacy is given to the legislative powers of the Commonwealth.’

- Per Dixon J in *Melbourne Corporation v Commonwealth* (1947) 74 CLR 31

Discuss the statement above.

(20 marks)